



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2014-0952]

RIN 1625-AA09

Drawbridge Operation Regulation; Victoria Barge Canal, Bloomington, TX

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the method of operation for the Victoria Barge Canal Railroad Bridge (“bridge”) across the Victoria Barge Canal, mile 29.4, at Bloomington, Victoria County, Texas. This final rule makes permanent the change in method of operation to allow the bridge owner to operate the bridge remotely from a dispatching center in Spring, Texas. This final rule increases the efficiency of operations while allowing for the safe navigation of vessels through the bridge.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type [USCG-2014-0952]. In the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-

mail Ms. Geri Robinson; Bridge Administration Branch, Coast Guard; telephone 504-671-2128, e-mail geri.a.robinson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On December 30, 2014, we published a temporary deviation from regulations; request for comments (TD) entitled “Drawbridge Operation Regulation; Victoria Barge Canal, Bloomington, Texas” in the Federal Register (79 FR 78304). We received no comments on this temporary deviation. No public meeting was requested, and none was held. However, a contractor raised an issue regarding the requirements of dispatchers to contact the vessels when a vessel entered the two-mile bridge zone. In response to this concern, the Coast Guard decided that prior to issuance of a final rule, further comments would be accepted under an interim rule.

On July 10, 2015, the Coast Guard published an interim rule with request for comments entitled “Drawbridge Operation Regulation; Victoria Barge Canal, Bloomington, Texas” in the Federal Register (80 FR 39683). The interim rule allowed mariners to continue transit while the bridge was being remotely operated and comment as to whether the proposed method of operation was sufficient to ensure the safety of vessels transiting the area. We did not receive any comments on the interim rule. No public meeting was

requested, and none was held.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The bridge owner, the Victoria County Navigation District, in conjunction with the Union Pacific Railroad (UPRR) requested permission to remotely operate the Victoria Barge Canal Railroad Bridge across the Victoria Barge Canal, mile 29.4 at Bloomington, Victoria County, Texas. Traffic on the waterway consists of commercial traffic - primarily vessels and tows providing services to the Port of Victoria, and no reported recreational traffic transits the waterway. The vertical lift bridge has a vertical clearance of 22 feet above high water in the closed-to-navigation position and 50 feet above high water in the open-to-navigation position.

Presently, the bridge opens on signal for the passage of vessels in accordance with 33 CFR 117.991. Under the Temporary Deviation published on December 30, 2014, and the interim rule published on July 10, 2015, this bridge has been remotely operated for the past year and mariners will not notice any changes to the ongoing method of operation of the bridge.

This final rule allows all vessels utilizing this stretch of the waterway to continue to transit the waterway unencumbered while providing for the bridge owner to operate the bridge from a remote location. Vessel operators should not see any changes in the efficiency of vessel movements as the bridge will still be required to open on signal for the passage of vessels.

IV. Discussion of Comments, Changes and the Final Rule

As discussed above, a temporary deviation was published on December 30, 2014, and an interim rule was published on July 10, 2015. The Coast Guard provided separate 60-day

comment periods for the temporary deviation and the interim rule. No comments were received and no changes to the final rule have been made.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the ability that vessels can still transit the bridge. This final rule allows all vessels utilizing this stretch of the waterway to continue to transit the waterway unencumbered while providing for the bridge owner to operate the bridge from a remote location. Vessel operators should not see any changes in the efficiency of vessel movements as the bridge will still be required to open on signal for the passage of vessels.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit

organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the property owners, vessel operators and waterway users who wish to transit on Victoria Barge Canal daily. However, this rule will not have a significant impact on a substantial number of small entities for the following reasons: a test deviation was conducted and an interim rule was published and no opposition in response to the test or interim rule was received by the Coast Guard Office of Bridge Administration. Further, through pre-coordination and consultation with property owners, vessel operators and waterway users, this operating schedule accommodates all waterway users with minimal impact.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business

and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “For Further Information Contact” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

For the reasons discussed in the preamble, the interim rule amending 33 CFR part 117 that published at 80 FR 39683 on July 10, 2015, is adopted as a final rule without change.

Dated: February 19, 2016

DAVID R. CALLAHAN

Rear Admiral, U.S. Coast Guard

Commander, Eighth Coast Guard District

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